

**REPORT OF THE
UNITED STATES COURT OF APPEALS
FOR THE ARMED FORCES**

October 1, 1997 to October 1, 1998

The Judges of the United States Court of Appeals for the Armed Forces submit their annual report on the administration of the Court and military justice during the 1998 Term of Court to the Committees on Armed Services of the United States Senate and the United States House of Representatives, and to the Secretaries of Defense, Transportation, Army, Navy, and Air Force in accordance with Article 146, Uniform Code of Military Justice, 10 USC § 946.

THE BUSINESS OF THE COURT

The number of cases carried over on the Court's Petition Docket at the end of the 1998 Term of Court reflected an increase of 23% from the number of cases pending at the end of the prior reporting period. (See Appendix A.) However, the number of cases carried over on the Master Docket decreased substantially by 64% during the same period. (See Appendix B.)

During the 1998 Term of Court the number of petitions for grant of review remained fairly constant compared with the prior reporting period. (See Appendix J.) The number of oral arguments increased by 14% during the 1998 Term of Court and the number of opinions released by the Court increased by the same percentage compared with the prior reporting period. (See Appendices C and D.)¹

The average processing time from the date of filing a petition to the date of a grant by the Court remained fairly constant during the 1998 Term of Court when compared with the prior reporting period. (See Appendix E.)

¹ Although not part of the business of the Court, it is noted that during its 1998 Term the Court was notified that petitions for writ of certiorari were filed with the Supreme Court of the United States in 30 Master Docket cases in which the Court issued a final decision.

Although the average processing time from the date of grant to the date of oral argument increased by 17%, the processing time from the date of oral argument to final decision remained fairly constant compared with the prior reporting period. (See Appendices F and G.) The average processing time from the filing of a petition to final decision on the Petition Docket decreased by 17%, and the same overall average on the Master Docket decreased slightly by 2%. (See Appendix H.) The overall average processing time from filing to final decision in all cases during the 1998 Term of Court increased by 19%. (See Appendix I.)

The Chief Justice of the United States, acting pursuant to Article 142(f), Uniform Code of Military Justice, 10 USC § 942(f), designated the Honorable Kenneth F. Ripple, United States Court of Appeals for the Seventh Circuit, and the Honorable H. Robert Mayer, United States Court of Appeals for the Federal Circuit, to sit as judges of the United States Court of Appeals for the Armed Forces during the 1998 Term of Court. Additionally, Senior Judge Robinson O. Everett was recalled and participated in the review and decision of several cases during the same reporting period.

During its 1998 Term the Court admitted 319 attorneys to practice before its Bar, bringing the cumulative total of admissions before the Bar of the Court to 31,160.

**PUBLIC AWARENESS PROJECT
(PROJECT OUTREACH)**

Pursuant to its practice established in 1987, the Court scheduled several special sessions and heard oral arguments in selected cases outside its permanent Courthouse in Washington, D.C. during the 1998 Term of Court. This practice, known as "Project Outreach", was developed as part of a public awareness program to demonstrate not only the operation of a Federal Court of Appeals, but also the effectiveness and quality of the criminal justice system of the Armed Forces of the United States. Hearings were conducted without objection of the parties at Fort Bliss, Texas; the University of Texas School of Law, Austin, Texas; the Wake Forest University School of Law, Winston-Salem, North Carolina; the Catholic University of America Columbus School of Law, Washington, D.C.; the George Washington University School of Law,

Washington, D.C.; the United States Coast Guard Academy, New London, Connecticut; the United States Military Academy, West Point, New York; the United States Air Force Academy, Colorado Springs, Colorado; and the Naval War College, Newport, Rhode Island.

This program has continued to promote an increased public awareness of the fundamental fairness of the military criminal justice system and the role of the Court in the overall administration of military justice throughout the world. The Court hopes that those who attend these hearings from both military and civilian communities will realize that the United States is a democracy that can maintain an armed force instilled with the appropriate discipline to make it a world power, while affording all its members the full protection of the Constitution of the United States and Federal law.

JUDICIAL VISITATIONS

During the 1998 Term of Court the Judges of the Court, consistent with past practice and their ethical responsibility to oversee and improve the entire military criminal justice system, participated in professional training programs for military and civilian lawyers, spoke to professional groups of judges and lawyers, and visited with judge advocates and other military personnel at various military installations throughout the world.

JUDICIAL CONFERENCE

On May 7 and 8, 1998, the Court held its Annual Judicial Conference in the Marvin Center, George Washington University School of Law, Washington, D.C. The Judicial Conference Program was certified for credit to meet the continuing legal education requirements of numerous State Bars throughout the United States in order to assist both military and civilian practitioners in maintaining those professional skills necessary to practice before trial and appellate courts. The Conference opened with welcoming remarks and a presentation by the Honorable Walter T. Cox III, Chief Judge, United States Court of Appeals for the Armed Forces, on the "State of the Court," followed by speakers for this year's Conference who included Professor Mark V. Tushnet, Georgetown University Law Center; Dean Donald N. Zillman, Dean and Godfrey Professor of Law, University of Maine School of Law; Professor Robert P.

Mosteller, Duke Law School; the Honorable John J. Farley, III, Associate Judge, United States Court of Veterans Appeals; Lieutenant Colonel Lawrence J. Morris, Major Maurice A. Lescault, Jr., and Major Norman F.J. Allen, III, The Judge Advocate General's School, United States Army; Professor Stephen A. Saltzburg, George Washington University Law School; Lieutenant Colonel Anne L. Burman, The Judge Advocate General's School, United States Air Force; Eugene R. Fidell, Esquire; Mr. Thomas E. Ricks, National Military Reporter, Wall Street Journal; Richard Parker, Deputy Chief of the Civil Division, United States Attorney's Office, Eastern District of Virginia; Robert C. Erickson, Assistant United States Attorney, Eastern District of Virginia; and Lieutenant Commander Tammy P. Tideswell, Naval Justice School, United States Navy.

The Judge Advocates Association Awards for outstanding career attorneys in each of the Armed Forces were presented by Colonel William R. Hagan, USA (Ret.), President of the Judge Advocates Association.

WALTER T. COX III
Chief Judge

EUGENE R. SULLIVAN
Associate Judge

SUSAN J. CRAWFORD
Associate Judge

H.F. "SPARKY" GIERKE
Associate Judge

ANDREW S. EFFRON
Associate Judge

USCA STATISTICAL REPORT

1998 TERM OF COURT

CUMULATIVE SUMMARY

CUMULATIVE PENDING OCTOBER 1, 1997

Master Docket	289
Petition Docket	235
Miscellaneous Docket	<u>7</u>
TOTAL	531

CUMULATIVE FILINGS

Master Docket	216
Petition Docket	1197
Miscellaneous Docket	<u>21</u>
TOTAL	1434

CUMULATIVE TERMINATIONS

Master Docket	400
Petition Docket	1142
Miscellaneous Docket	<u>25</u>
TOTAL	1567

CUMULATIVE PENDING OCTOBER 2, 1998

Master Docket	105
Petition Docket	290
Miscellaneous Docket	<u>3</u>
TOTAL	398

OPINION SUMMARY

<u>CATEGORY</u>	<u>SIGNED</u>	<u>PER</u>	<u>CURIAM</u>	<u>MEM/ORDER</u>	<u>TOTAL</u>
Master Docket	117		8	275	400
Petition Docket	0		0	1142	1142
Miscellaneous Docket	<u>5</u>		<u>0</u>	<u>20</u>	<u>25</u>
TOTAL	122		8	1437	1567

FILINGS (MASTER DOCKET)

Remanded from Supreme Court	3
Returned from Court of Criminal Appeals....	3
Mandatory appeals filed	0
Certificates filed	32
Reconsideration granted	3
Petitions granted (from Petition Docket)...	<u>175</u>
TOTAL	216

TERMINATIONS (MASTER DOCKET)

Findings & sentence affirmed	317	
Reversed in whole or in part	81	Signed 117
Granted petitions vacated	0	Per curiam . . 8
Other disposition directed	<u>2</u>	Mem/order .. <u>275</u>
TOTAL	400	TOTAL 400

PENDING (MASTER DOCKET)

Awaiting briefs	34
Awaiting oral argument	32
Awaiting lead case decision (trailer cases)	31
Awaiting final action	<u>8</u>
TOTAL	105

FILINGS (PETITION DOCKET)

Petitions for grant of review filed	1185
Petitions for new trial filed	1
Cross-petitions for grant filed	4
Petitions for reconsideration granted	5
Returned from Court of Criminal Appeals ...	<u>2</u>
TOTAL	1197

TERMINATIONS (PETITION DOCKET)

Petitions for grant dismissed	1	
Petitions for grant denied	898	
Petitions for grant granted	175	
Petitions for grant remanded	49	Signed 0
Petitions for grant withdrawn	19	Per curiam .. 0
Other	<u>0</u>	Mem/order.. <u>1142</u>
TOTAL	1142	TOTAL 1142

PENDING (PETITION DOCKET)

Awaiting briefs 137
 Awaiting Central Legal Staff review 46
 Awaiting final action 107
 TOTAL 290

FILINGS (MISCELLANEOUS DOCKET)

Writs of error coram nobis sought 1
 Writs of habeas corpus sought 1
 Writs of mandamus/prohibition sought 1
 Other extraordinary relief sought 3
 Writ appeals sought 15
 TOTAL 21

TERMINATIONS (MISCELLANEOUS DOCKET)

Petitions withdrawn	0	
Petitions remanded	0	
Petitions granted	4	
Petitions denied	20	Signed 5
Petitions dismissed	1	Per curiam. 0
Other	<u>0</u>	Mem/order.. <u>20</u>
TOTAL	25	TOTAL 25

PENDING (MISCELLANEOUS DOCKET)

Awaiting briefs 0
 Awaiting Writs Counsel review 0
 Awaiting final action 3
 TOTAL 3

RECONSIDERATIONS & REHEARINGS

<u>CATEGORY</u>	<u>BEGIN</u>	<u>FILINGS</u>	<u>END</u>	<u>DISPOSITIONS</u>		
	<u>PENDING</u>		<u>PENDING</u>	<u>Granted</u>	<u>Denied</u>	<u>Total</u>
Master Docket	1	80	6	3	72	75
Petition Docket ..	0	28	0	5	23	28
Misc. Docket	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
TOTAL	1	108	6	8	95	103

MOTIONS ACTIVITY

<u>CATEGORY</u>	<u>BEGIN</u>	<u>FILINGS</u>	<u>END</u>	<u>DISPOSITIONS</u>			
	<u>PENDING</u>		<u>PENDING</u>	<u>Granted</u>	<u>Denied</u>	<u>Other</u>	<u>Total</u>
All motions	23	822	25	736	76	8	820